IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 2282 of 2002

and

CIVIL APPLICATION NO. 8392 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

HEIRS AND LEGAL REP. OF DECD. RAMESHBHAI PARSOTTAMBHAI

Appearance:

MS ROOPAL R PATEL for appellant/applicant

No one appears on behalf of Respondent No. 1-5

MS MEGHA JANI for Respondent No. 6-Insurance Company

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of Order: 28/10/2002

COMMON ORAL JUDGMENT

(Per : MR.JUSTICE H.K.RATHOD)

Today, we have condoned the delay in filing the first appeal vide order passed in Civil Application No. 4744 of 2002, and the present appeal is taken up for hearing, with the consent of learned Advocate Ms.Roopal Patel appearing on behalf of the appellant and Ms.Megha Jani, appearing for respondent Insurance Company.

2. Heard learned Advocates appearing for the respective parties.

3. Admitted. Notice of admission is waived by learned Advocate Ms.Megha Jani appearing for the respondent Insurance Company.

4. In the First Appeal, the Gujarat State Road Transport Corporation ('Corporation' for short) has challenged the award passed by the Motor Accident Claims Tribunal (Aux.I), Ahmedabad (Rural), in M.A.C.Petition No. 1106 of 1990, dated 11th July 2001. It may be stated that the judgment and award is a composite one passed in all, ten M.A.C. Petitions. The Tribunal has partly allowed the petition, being M.A.C.Petition No.1106 of 1990 and declared that the applicants are entitled to get Rs.1,95,900/- from the opponents jointly and severally along with 9% per annum interest from the date of the petition till realisation along with proportionate costs of the petition. It is directed by the Tribunal that any amount, if paid, as interim compensation, be given credit of and the deficit Court Fees be deducted from the amount awarded before making payment and further that the order regarding investment will be passed at the time of withdrawal of the amount by the applicants.

5. The present appeal is filed by the Corporation for a limited amount of Rs.42,500/- and the rest of the claim is not challenged by the Corporation.

6. Learned Advocate Ms.Roopal Patel appearing on behalf of the appellant has raised three contentions before us. The first contention is about the negligence which has been determined by the Tribunal in respect to ST Bus to the extent of 60% and in respect to that of the Truck driver to the extent of 40%. She submitted that looking to the panchnama and other documents, the ST Bus driver was not responsible for the 60% negligence. Therefore, she challenged the finding of the Tribunal in respect to the negligence aspect.

The second contention which has been raised by learned Advocate Ms.Roopal Patel is that, at the time of the accident, the deceased was aged about 31 years, the mother of the deceased was aged about 60 years and brother of the deceased, namely, Jayeshbhai was aged about 23 years. Therefore, the Tribunal has committed a gross error in applying the multiplier of 15 and ignored the age of the parents. She has relied upon a decision of the Apex Court in the case of U.P.State Road Transport Corpn. and ors. v. Trilok Chandra, reported in 1996 ACJ 831.

The third contention which has been raised by learned Advocate Ms.Roopa Patel is that there was no evidence before the Tribunal about the income of the deceased and therefore, the Tribunal has committed a gross error in assessing the income of the deceased. Except the above, no other contention has been raised by learned Advocate Ms.Roopal Patel.

7. The brief facts of the present appeal are as under:

The accident occurred on 5th January 1990, at about 6.30 a.m., near Ranosar Patiya, on Bavla-Bagodara National Highway Road. The deceased and the injured were travelling in the ST Bus No.GQE 8988. The bus was coming from Ahmedabad side. The Truck No.GTG 1883 was stationary on the left side of the road facing Bavla side. The ST bus No.GQE 8988 came from Bavla side in full speed and dashed with the stationary truck. Some of the persons travelling in the ST bus died while some of the persons were injured. Therefore, the claim petitions have been filed by the claimants.

Applicant No.1 is mother and applicant No.2 is the brother of the deceased Rameshbhai. The deceased was 29 years old and he was earning Rs.40,000/- per year at the time of the accident and therefore, the claimants have filed claim petition for getting Rs.5,00,000/- as compensation from the opponents.

The present appellant Corporation filed its written statement against the claim of the applicants and denied that the driver of the ST bus has caused the accident and, therefore, a prayer was made before the Tribunal to dismiss the claim petitions. Except that, no other contention has been raised by the Corporation in its written statement.

Thereafter, the Tribunal framed the Issues vide Exh.39. Before the Tribunal, the documentary evidence consists of the complaint at Exh.173 and panchnama at Exh.174 were produced. It appears from the complaint that Truck No. GTG 1883 was a stationary vehicle and at the time of accident, ST Bus No.GQE 8988 came from the back side and dashed with the truck. The panchnama Exh.174 shows the number of the vehicles. Thus, according to the Tribunal, the factum of the accident is proved and from the compliant and the panchnama, the Tribunal made it clear that the truck was a stationary vehicle and the ST bus dashed with the truck.

One witness Jayeshbhai was examined before the Tribunal vide Exh.65. In his deposition, he has stated that the bus was going in full speed and it dashed with the truck which was parked on the road, that the driver of the ST bus suddenly found that the truck was parked on the road and so he took the bus on the right side.

The appellant Corporation has examined its driver Rameshchandra Bhagvandas Sukhanandji, vide Exh.119. He has deposed before the Tribunal that he is holding the driving licence and Badge No.8720 and that he was driving the ST Bus No.GQE 8988. When he reached near Ranosara Patiya, one truck came from the opposite side in full speed and full light, and as there was darkness foggy atmosphere, he could not see the stationary truck which was parked on the tar road; that there was no reflector at the back side and no big stones were kept surrounding the truck and that the front side portion dashed with the rear portion of the truck. During the cross examination, he has admitted that he could see upto 15 ft. distance only and that he was not present at the place of the accident when the panchama was drawn. The departmental inquiry was initiated against him and in that inquiry, a penalty of Rs.800/- was imposed by the Corporation. No documents were produced by the Corporation before the Tribunal in respect to the inquiry which was initiated by it against the driver of the ST bus. Therefore, the Tribunal has drawn an adverse inference against the Corporation. The Tribunal has observed in para 30 of the judgment that it is clear that the ST Corporation has not produced the report of Departmental inquiry and so an adverse inference can be drawn against it. Moreover, in the inquiry, penalty of Rs.800/- was imposed on the driver of the ST bus which supports the say of the applicants.

Thereafter, in paragraph 34 of the judgment, the Tribunal has examined the question of contributory

negligence of both the drivers. As per the complaint at Exh.173, the driver of the truck carrying the milk can stopped the truck at about 6.30 a.m. near Ranosar Patiya and the work of loading milk can was going on. The bus came from behind and dashed with the rear right side portion of the truck and because of the dash, the truck went into the ditch and stopped after dashing with the tree. It appears from the panchnama at Exh.174 that the left portion of the bus was damaged and left side iron sheet and seats upto the conductor seat were totally damaged, while the right side of the truck was totally damaged. It may be mentioned that the accident had taken place on 5th January 1990 at 6.30 a.m. As per the deposition of the driver Rameshchandra, the width of the road is 22 to 24 ft. Admittedly, the truck was a stationary vehicle and was used for carrying milk can. The truck was stopped for loading the milk can and so naturally, it was stopped there for few minutes. After the accident, the truck went into the ditch and stopped after dashing with the tree and the bus was also standing near the truck. Admittedly, the left side of the bus was damaged, while the right side of the truck was totally damaged. The accident had taken place at 6.30 a.m. and at that time, there might not be deep darkness, as suggested by the driver of the ST bus. It may be possible that there may be dim light. There is no evidence to show that the back lights of the truck were on. There is also no evidence to show that the truck had reflectors and indicators. The driver of the truck has not been examined before the Tribunal, but the Tribunal has considered the principle of res ipsa loquitur and looking to the damage caused to the ST bus as well as the truck and considering the width of the road, i.e. 22 to 24 ft., the Tribunal has come to the conclusion that if the driver of the bus had taken his bus on the right side, the accident could have been avoided. Similarly, if the driver of the truck had kept the back side lights on and if he had parked his truck on the extreme left side of the road, the accident could have been avoided. Thereafter, considering the entire evidence as a whole, the Tribunal was of the opinion that the driver of the ST bus has contributed the negligence to the extent of 60% and the driver of the truck has contributed the negligence to the extent of 40%.

8. In view of the above, looking to the evidence led before the Tribunal and considering the observations made by the Tribunal, according to our opinion, the Tribunal has rightly appreciated the evidence led before it and has not committed any error in coming to the conclusion that because of the negligence on the part of the

drivers, the accident has occurred. Admittedly, the truck was a stationary vehicle having no movement and only the ST bus was having movement which suggests regarding the excess speed of the ST bus which dashed with the truck causing damage to the bus as well as the truck. Therefore, the finding recorded by the Tribunal and holding the contributory negligence of 60% on the part of the ST driver is proper and based on the evidence on record.

9. In respect to the second contention about the income of the deceased and the brother of the deceased who has not been considered by the Corporation as a dependent, we make it clear that, no such contention was raised by the Corporation in the written statement and no such submission has been made by the Corporation before the Tribunal. A specific question was asked to learned Advocate Ms.Roopal Patel as to whether any such contention has been raised in the written statement or any submission has been made to that effect before the Tribunal, she was unable to point out anything. The only submission made by the Corporation in respect to the quantum of the compensation is that there was no evidence in respect to the income of the deceased and that the multiplier of 15 which has been applied by the Tribunal is on a higher side because the age of the mother has not been taken into account by the Tribunal. In light of this contention before the Tribunal, Dhirajben, mother of the deceased, is examined vide Exh.64, wherein she has deposed that her son deceased Rameshbhai was running the shop of Pan-Bidi, cuttlery and cold-drinks and he was earning Rs.5,000/- per month; that out of which, he was giving Rs.3,000/- per month to the family and that she had spent Rs.700/- for taxi fare. Before the Tribunal, the claimants have produced the documentary evidence consists of the complaint at Exh.52, Janva Jog entry at Exh.53, post mortem note at Exh.60 and 63, inquest panchnama at Exh.170, birth certificate at Exh.54 and the death certificate at Exh.55. Before the Tribunal, learned Advocate for the claimants made a submission that in case of a businessman, the income of Rs.3,000/- per month should be presumed and he relied upon a decision in the case of T.Gajayalakshmi Thayumanavar and anr. v. Secretary, Public Works Department, Govt. of Tamil Nadu, Madras and ors., reported in 1999 ACJ 755, though that decision was not helpful to the claimants. On behalf of the claimants, learned Advocate has suggested to the Tribunal, in light of another decision, which was referred to by the learned Advocate, considering the evidence of Dhirajben, that the deceased was giving Rs.3,500/- per month to the family and that he was

earning Rs.5,000/- per month at the time of the accident and in view of the above principle, the future prospective income would be Rs.7,000/- and the total would come to Rs.10,500/- and if it is divided by two, the amount of Rs.5,250/- would be the future prospective income.

10. The Tribunal has examined the matter on merits for deciding the compensation and considered the Light Bill at Exh.139 which was produced by the claimants. But, except that, no other evidence was shown to the Tribunal to prove the fact that the deceased was running Pan House, namely, "Yamuna Pan House". According to the claimants, it was a rented shop, but the claimants have not produced any evidence of income of the deceased. Therefore, in absence of any proof of income, the Tribunal has considered the future prospective income which is assessed as Rs.3,000/- per month. According to the birth date certificate at Exh.54, the deceased was born on 28th August 1960 and so he was aged about 31 years at the time of the accident. The Tribunal has also taken into consideration one more aspect that after the accident, the period of more than ten years has been passed and the applicant Dhirajben is still alive. Applicant No.2 who is the brother of the deceased is also interested in the claim. The deceased was unmarried and therefore, the Tribunal has deducted 2/3rd amount from the income, i.e. Rs.2,000/- per month for his personal expenses and 1/3rd i.e. Rs.1,000/- per month is taken which is multiplied by 12 which comes to Rs.12,000/- per year as dependency benefit to the family. The Tribunal has also applied the multiplier of 15. The contention raised by learned Advocate Ms.Roopal Patel that the Tribunal has not considered the age of the mother, i.e. 60 years while applying the multiplier. It is necessary to note one more aspect that looking to the age of the deceased, i.e. 31 years, at the time of the accident and if we have some guidance from the Second Schedule which relates to Section 163-A of the Motor Vehicles Act, then in the case of the victim who is aged about 30 years, but not exceeding 35 years, a multiplier of 17 has been suggested. One more aspect is that the claimants are not the mother only, but the brother of the deceased who was aged about 23 years at the relevant time. Considering all these aspects, the Tribunal has applied the multiplier of 15. While fixing the amount of compensation in cases of accident, the Apex Court has observed that, afterall, some guess work, some hypothetical consideration and some amount of sympathy linked with the nature of the disability caused is to be considered, as in the case of R.D.Hattangadi v. M/s.Pest

Control (India) Pvt. Ltd. and ors., reported in AIR 1995 SC 755. The relevant paragraph from the said decision, i.e. paragraph 12 is quoted as under:

> "12. In its very nature whenever a Tribunal or a Court is required to fix the amount of compensation in cases of accident, it involves some guess work, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

In view of these facts, the Apex Court has observed in the case of Trilok Chandra, reported in 1996 ACJ 831, wherein it is observed that while applying the multiplier not only the age of the deceased, but the age of the parents or the claimants is required to be taken into account. Similarly, it is also observed by the Apex Court in that decision that all that depends upon the facts and circumstances of each case. In that case, the Apex Court has also suggested multiplier of 18 which can be applied in particular facts and circumstances of the case. Considering this aspect and looking to the facts of the present case that the claimants are not only the mother, aged about 60 years but the brother, aged about 23 years is also there, the Tribunal has applied multiplier of 15 considering the overall facts and circumstances of the case. The Tribunal has also rightly assessed the income of the deceased in view of the evidence of the mother that her son was running Pan Bidi Shop, cuttlery and cold drinks and she has also stated in her evidence that an amount of Rs.3,500/- was being given by her son towards the expenses of the family. Therefore, in view of the said evidence, some times, in case of the income of the deceased, there may not be any concrete or clear evidence available to the claimants and therefore, some guess work is necessary on the basis of the evidence of the mother, light Bill at Exh.139 and looking to the age of the deceased, i.e. 31 years, the Tribunal has rightly assessed the income at Rs.3,000/per month. Deducting 2/3rd from the said amount, it comes to Rs.1,000/- per month and multiplied by 12, then it comes to Rs.12,000/- being the yearly dependency of the family and by applying the multiplier of 15, it comes to Rs.1,80,000/-. In view of the Second Schedule and considering the decision of the Apex Court reported in AIR 1995 SC 755, according to our opinion, the Tribunal has rightly assessed the income of the deceased and rightly applied the multiplier of 15, for which, the Tribunal has not committed any error. The method which

has been adopted by the Tribunal is in an objective manner and looking to the facts, the multiplier of 15 is correct. However, we would like to note that while assessing the income of the deceased at Rs.3,000/against the evidence of the mother, i.e. Rs.5,000/-, the Tribunal has not considered the future prospective income. If the future prospective income had been taken into account, then the income of the deceased must be on a higher side. Therefore, the Tribunal has assessed the income on the basis of the existing income at the time when the deceased died. Therefore, ultimately, we have to see that in case of a young person aged about 31 years, who was travelling in the bus, died because of the negligence on the part of the ST bus driver, in such a situation, a bread winner who has been lost by the family whether in light of the facts, whatever the compensation awarded by the Tribunal under whatever heads, is just, fair and proper or not. In such situation, a view has been taken by the Apex Court in reported decision, 1971 ACJ 206 that, ultimately, the Court has to consider a reasonable, just and fair compensation to be awarded by the Tribunal. Section 168 of the Motor Vehicles Act is enacted to see that a just compensation has been awarded by the Tribunal. We are totally satisfied with the facts and circumstances of the case and the assessment made by the Tribunal in respect to the income and the multiplier of 15 as applied by the Tribunal and that the Tribunal has not committed any error which requires any interference by us. Therefore, the contention which has been raised by learned Advocate Ms.Roopal Patel cannot be accepted and the same is rejected. The Tribunal has awarded Rs.10,000/- under the head of Expectation of Life and Rs.700/- for taxi fare, Rs.900/- for transportation, Rs.2,000/- for medicines, medical treatment, attendant charges etc., and Rs.3,000/for funeral expenses, the total of which comes to Rs.1,95,900/-. The Tribunal has awarded this amount of compensation with running interest at the rate of 9% per annum from the date of the petition till realisation.

11. The decision of the Apex Court which has been relied by learned Advocate Ms.Roopal Patel in the case of U.P.State Road Transport Corporation v. Trilok Chandra and ors., reported in 1996 ACJ 831, wherein the Apex Court has considered the various defects in the Second Schedule read with Section 163-A of the Motor Vehicles Act and also discussed the principles of determining the compensation. The Apex Court has observed in paragraph 11 as under:

"11. The Gujarat High Court also pointed out

that the principles laid down in the case of Davies, (1942) AC 601 and that in the case of Nance, (1951) AC 601, led to the same end results because, although as per Viscount Simon the dependency amount is required to be multiplied by the figure of the expected useful life of the deceased, the sum has to be discounted because equivalent amount in lump sum has to be worked out keeping in view the fact that the sum was to be spread over a period of years and secondly, allowance had to be made for uncertainties like the possible premature death of the dependents or of the deceased had he been alive, remarriage of the widow, acceleration over other interest of the estate, etc. The Gujarat High Court expressed the opinion that if proper discount is done after arriving at the lump sum equivalent to this dependency, spread over for a period of years the end-result will be the same as that calculated by using a proper multiplier to the annual loss. This multiplier is the year's purchase factor. Referring to the decision of Lord Diplock in Mallett v. McMonagle, 1969 ACJ 312 (HL, England), wherein an annuity Table was worked out, the High Court observed that 12 to 15 years' should be the normal multiplier and for the case before the Court the outer multiplier of 15 years' purchase would be proper. The same view in regard to the range for a healthy young man was expressed by this Court in C.K.Subramonia Iyer v. T. Kunhi Kuttan Nair, 1970 ACJ 110 (SC),"

Thereafter, the Apex Court has also considered the facts of the reported case. Ultimately though the Apex Court has found that multiplier which has been applied in the reported case is excessive, but the Apex Court was satisfied that a very low multiplicand was used as the loss of dependency. If that is required to be corrected, the multiplicand and use the correct multiplier, the compensation would work out to near about the same figure. The said discussion is in paragraph 19 of the said decision, which is quoted as under:

"19. We had indicated we would not interfere with the amount awarded, since in our view, while the multiplier used is excessive, we are satisfied that a very low multiplicand was used as the loss of dependency. If we were to correct the multiplicand and use the correct multiplier, the compensation would work out to near about the

> same figure. Therefore, while agreeing with the learned advocate for the appellant, we are disinclined to interfere with the figure of compensation. We, therefore, hold that the Tribunal/court fell into an error in the choice of the multiplier and allow the appeal to that extent but we do not, in the circumstances of the case, interfere with the quantum of compensation. No order as to costs."

12. Therefore, in view of the decision of the Apex Court as referred to above in the case of U.P.State Road Transport Corporation v. Trilok Chandra, ultimately, the Apex Court has found that the multiplier which has been applied in the facts of that reported case is excessive and even then, the Apex Court has not interfered with the multiplier because of the reason that ultimately, a just, reasonable and proper compensation has been awarded to the claimants. Similarly, in the facts of the present case also, the Tribunal has assessed the monthly income of Rs.3,000/- per month and while deducting 2/3rd as per the settled principle for the unmarried person from the said amount, it comes to Rs.1,000/- per month and multiplied by 12, then it comes to Rs.12,000/- being the yearly dependency of the family. Thereafter 15 multiplier has been applied which ultimately comes to Rs.1,80,000/-. The future prospective income has not been taken into account by the Tribunal, even though the ultimate compensation which comes to just, reasonable and proper. Therefore, according to our opinion, whatever method may be applied, but if the ultimate conclusion of awarding compensation is just, reasonable and proper, then normally, the Court should not have to interfere and disturb such compensation.

13. In view of the above observations, the contentions which have been raised by learned Advocate Ms.Roopal Patel appearing on behalf of the appellant Corporation cannot be accepted and the same are rejected. There is no error committed by the Tribunal while awarding the compensation to the claimants. We are in total agreement with the findings recorded and the ultimate conclusion reached by the Tribunal and there is no substance in this appeal. Therefore, this appeal is dismissed, with no order as to costs.

14. In view of the order of dismissal of the main appeal, the Civil Application for stay does not survive and the same is rejected.

(Kshitij R. Vyas, J.)

(H.K. Rathod, J.)

Sreeram.